

REMARKS

Claims 1-4, 7, 8, 10-32, 39, 40 and 46-51 are pending. Claim 1 is amended hereby.

The claims were again rejected under 35 USC §112, first paragraph, as allegedly failing to comply with the written description requirement. This rejection is respectfully traversed.

The Examiner argues that the specification does not provide support for the lower end point of the recited cell size range. However, support for the lower limit (20 μm) is provided in the originally-filed claims. Accordingly, at issue is whether the additional recitation of “at least” would constitute new matter. In order to obviate this portion of the rejection, claim 1 has been amended to delete “at least.” It should be noted, however, that the working examples provided values of the cell dimension which fall completely within the range of 20 to 400 μm . Since 100% of the cells in Example 1 have a cell dimension between 40 and 170 μm and 100% of the cells of Example 10 have a cell dimension between 35 and 188 μm , each falls within the claimed range from 20 to 400 μm . Accordingly, the examples literally support the recitation set forth in the claims.

Also at issue is whether the amylose contents of the starches are considered to be new matter. The amylose content of the starches is inherent. Evidence of its inherency is set forth in “Starch Chemistry and Technology” which is of record in the application.

For at least the forgoing reasons, the claims are in full compliance with 35 USC §112.

Claims 1-4, 7, 8, 10-32, 39 and 40 were rejected under 35 USC §103(a) as being unpatentable over Altieri. This rejection is respectfully traversed.

In the Office Action, the Examiner asserts that Altieri teaches that “[s]tarches from different sources, e.g., potato, corn, tapioca, and rice, etc, and unmodified or modified, may be used” (emphasis added). Altieri does not teach what the Examiner asserts. It is respectfully submitted that the Examiner has mischaracterized the disclosure at column 4, lines 4-15 and 38-40.

More specifically, Altieri teaches that the starting starch material useful in its invention must be a high amylose starch, i.e, one containing at least 45% by weight of amylose or materials such as selected flours, which are modified flours, preferably consisting principally of high amylose starch. At column 4, beginning at line 8, Altieri states that it is well known that starch is composed of two fractions, the molecular arrangement of one being linear and the other being branched. Here Altieri explains that the linear fraction of starch is known as amylose and the branched amylopectin. Then, Altieri teaches that starches from different sources, e.g, potato, corn, tapioca, and rice, etc, are characterized by different relative proportions of the amylose and amylopectin components. Thus, contrary to the assertion in the Office Action, Altieri does not teach that potato, corn, tapioca and rice may be used in its invention, and is only explaining a point with respect to the two fractions of starches. Altieri does not at all suggest use of potato, wheat or tapioca starch in its invention. Instead, Altieri emphasizes that its starting material must contain at least 45% by weight of amylose. Altieri further explains that there are known hybrid varieties which may contain over 45% of amylose, and these hybrid varieties are referred to as high amylose of amylomaize.

Accordingly, because Altieri does not teach or suggest use of a natural starch derived from one member selected from the group consisting of potato, wheat and tapioca starch, Altieri fails to render the claims unpatentable. Favorable reconsideration and withdrawal of the rejection are earnestly solicited.

Claim 51 was rejected under 35 USC §103(a) as being unpatentable over Altieri in view of Gallagher et al. This rejection is respectfully traversed.

In this rejection, the Examiner acknowledges that Altieri does not teach a polyester/starch blend. Gallagher et al. is applied by the Examiner for its disclosure of blends of starch with polyester. The Examiner argues that it would have been obvious to employ blends of starch with polyester based upon the teachings of Gallagher et al. Applicants respectfully disagree.

One of ordinary skill in the art would not have been motivated to combine the teaching of Altieri with the teaching of Gallagher et al. Specifically, Altieri provides for extrusion of starch with relatively high moisture content. As shown in Table 3 at columns 11 and 12, the high amylose starch has an initial moisture content in the range from 8 to 20.4%, and additional moisture is added. Thus, the total moisture in the extrusion ranges from 12.8 to 26.4%.

In contrast thereto, Gallagher et al., which makes use of polyesters, requires that the moisture content of the polyester be maintained to no more than 50 ppm during processing. Gallagher et al. further requires that the starch should be dried to a moisture content less than about 1% (See column 10, lines 22-51).

Amendment
Application No. 09/784,707
Attorney Docket No. 030229

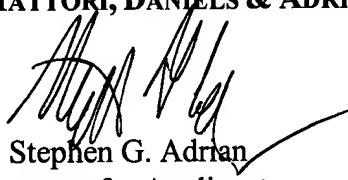
In view of these differing disclosures, one of ordinary skill in the art would not have contemplated the use of the polyester of Gallagher et al. for the production of the foamed products of Altieri. Accordingly, favorable reconsideration and withdrawal of this rejection are earnestly solicited.

For at least the foregoing reasons, the claimed invention distinguishes over the cited art and defines patentable subject matter. Favorable reconsideration is earnestly solicited.

Should the Examiner deem that any further action by applicants would be desirable to place the application in condition for allowance, the Examiner is encouraged to telephone applicants' undersigned attorney.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,
WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP


Stephen G. Adrian
Attorney for Applicants
Registration No. 32,878
Telephone: (202) 822-1100
Facsimile: (202) 822-1111

SGAarf

Attachments: RCE Transmittal
Petition for Extension of Time